

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1553 w/CS Relating to Health Care Services  
**SPONSOR(S):** Llorente  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1928

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Corrections (Sub)</u>	<u>6 Y, 0 N</u>	<u>Maynard</u>	<u>De La Paz</u>
2) <u>Public Safety &amp; Crime Prevention</u>	<u>17 Y, 0 N w/CS</u>	<u>Maynard</u>	<u>De La Paz</u>
3) <u>Public Safety Appropriations (Sub)</u>	<u></u>	<u></u>	<u></u>
4) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Currently under Florida law, prisoners who wish to file a formal complaint with some aspect of the health care provided in the prison system may either follow the internal grievance process within the Department of Corrections, or may file a complaint directly with the Department of Health. Currently, the Department of Corrections has an Inmate Grievance Office in which the Office of Health Services reviews whether health care standards and procedures are met, pursuant to s. 944.09(1)(d), F.S.. Even complaints regarding the Region IV health services which are privatized may be dealt with through this grievance process. In filing a complaint with the Department of Health, inmates are able to circumvent the grievance process within the Department of Corrections where many complaints could be resolved internally.

HB 1553 w/CS provides that a complaint filed by a state prisoner with the Department of Health against a health practitioner employed by the Department of Corrections, is not legally sufficient unless there is a showing that the prisoner has exhausted all available administrative remedies within the state correctional system. This proposal does not limit or prevent access to the Department of Health for review of legitimate health concerns as stated in s. 456.073, F.S., but allows the Department of Corrections to investigate and identify these issues first, using s. 944.09(1)(d), F.S..

HB 1553 w/CS would permit the Department of Health after a preliminary inquiry to determine legal sufficiency and proceed to discipline if the department determines that "the practitioner may present a serious threat to the health and safety of any individual who is not a state prisoner." Under the amendment, the Department of Health is also given 15 days notice whenever the Department of Corrections disciplines or allows a health care practitioner to resign for an offense related to the practice of their profession.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1553b.ps.doc  
**DATE:** April 10, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

Currently under Florida law, prisoners who wish to file a formal complaint with some aspect of the health care provided in the prison system may either follow the internal grievance process within the Department of Corrections, or may file a complaint directly with the Department of Health. Currently, the Department of Corrections has an Inmate Grievance Office in which the Office of Health Services reviews whether health care standards and procedures are met, pursuant to s. 944.09(1)(d), F.S..

According to the Department of Corrections, there is both an informal and formal grievance process for inmates to address concerns related to healthcare. Within the informal process, inmates may fill out a complaint form. The Chief Health Officer then assigns the complaint response to one or two Health Officers at the correctional institution. The inmate is then provided a written or oral response, either of which is recorded in his or her medical file. A separate maintenance log is used to record activity related to the complaint. The informal process also exists to respond to external inquiries brought by family members, lawyers, or government officials. Responses to these complaints are coordinated through the central office of the Office of Health Services or one of its regional offices. In addition, there is a formal grievance process which follows the procedures outlined by federal statute. This process begins by the inmate's filing of a very specific form according to procedure and rules. There are strict timelines for the response by the Department of Corrections, and the formal process allows for an appeal to the central office of the Office of Health Care if the inmate feels the complaint was addressed in error. Even complaints regarding the Region IV health services which are privatized may be dealt with through both the informal and formal grievance processes. In filing a complaint with the Department of Health, inmates are able to circumvent these grievance processes within the Department of Corrections where many complaints could be resolved internally.

HB 1553 w/CS provides that a complaint filed by a state prisoner with the Department of Health against a health practitioner employed by the Department of Corrections is not legally sufficient unless there is a showing that the prisoner has exhausted all available administrative remedies within the state correctional system. This proposal does not limit or prevent access to the Department of Health for review of legitimate health concerns as stated in s. 456.073, F.S., but allows the Department of Corrections to investigate and identify these issues first, using s. 944.09(1)(d), F.S..

HB 1553 w/CS would permit the Department of Health after a preliminary inquiry to determine legal sufficiency and proceed to discipline if the department determines that "the practitioner may present a serious threat to the health and safety of any individual who is not a state prisoner." Under the bill w/CS, the Department of Health is also given 15 days notice whenever the Department of Corrections disciplines or allows a health care practitioner to resign for an offense related to the practice of their profession.

C. SECTION DIRECTORY:

Section 1. Amends s. 456.073, F.S., to require that a prisoner's complaint to the Department of Health against a health.

Section 2. Provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not yet reviewed this bill to determine a fiscal impact.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

Because prisoners may still pursue their complaints within the Department of Corrections, and failing there, then take them up with the Department of Health, there should be no procedural due process issues as to this proposed legislation.

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

The effect of the bill is unclear with regard to anonymous complaints or complaints by confidential informants. The Department of Health is authorized to receive and investigate such complaints pursuant to s. 456.073(1), F.S.. Such complaints, however, must be "in writing and [be] legally sufficient." Id. Because the bill provides that a complaint is not legally sufficient "unless there is a showing that the prisoner complainant has exhausted all available administrative remedies within the state correctional system," it is unclear how an anonymous or confidential complainant could file a legally sufficient complaint without revealing his or her identity.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On April 2, 2003, the Subcommittee on Corrections voted the bill and an amendment favorably. The amendment would permit the Department of Health after a preliminary inquiry to determine legal sufficiency and proceed to discipline if the department determines that "the practitioner may present a serious threat to the health and safety of any individual who is not a state prisoner." Under the amendment, the Department of Health is also given 15 days notice whenever the Department of Corrections disciplines or allows a health care practitioner to resign for an offense related to the practice of their profession.

On April 10, 2003, the Committee on Public Safety & Crime Prevention approved HB 1513 and the Committee Substitute described as the amendment above.